

*Mark G. Fleischhacker*

USSN: 09/770,342

**REMARKS/ARGUMENTS**

The above Amendments to the Claims are proposed to the Examiner handling this application per a facsimile communication dated March 30, 2006. Those amendments to the claims and several other issues were discussed during a telephone conference on March 31, 2006. The time and Examiner courtesies extended to Mark Fleischhacker, the inventor and Mr. Bill Whealon, Ph.D. of assignee Lake Region Manufacturing, Inc. and the undersigned, are gratefully acknowledged. This Amendment will confirm the substance of that telephonic interview in accordance with the Rules.

The Claim amendments proposed to Examiner Marmor per facsimile dated March 30, 2006, are incorporated herein exactly as proposed.

The amendments made to Claims 1, 5, 10, and 19 were made to overcome the anticipation rejections over U.S. 5,251,640 ("Osborne") and U.S. 6,458,088 ("Hurtak et al.") and various secondary references. The Amendment of "Comprising" to "consisting essentially of" is specifically intended to overcome and eliminate as a basis for an anticipation rejection, the Examiner's analysis at page 8, the first full paragraph of the October 4, 2005 Office Action. Clearly "consisting essentially of" being a more closed-ended transitional phrase eliminates the interpretation of the Examiner in that paragraph.

The independent claims of the present application also were amended to insert the word "non-braided". Thus, language is found in the Disclosure, page 2, line 16 (Patent Application Publication 2003/0060731, paragraph 0014). In accordance with the Examiner's suggestion in the Office Action, we also added the term "non-woven" to Claims 10 and 19. Thus, we believe that rejection of Claims 1-12, 16, 17, and 19-21, as being anticipated by Osborne, has been overcome.

The attached Declaration of William Whealon is incorporated by reference herein. At paragraphs 7 and 8 in Dr. Whealon's Declaration, one of the surprising and unexpected advantages of the present invention over that disclosed by Osborne is discussed. Specifically, the present invention permits the use of grinding to create a flexible distal tip for a guide wire. Osborne, in contrast, would not permit application of the technique of centerless grinding because the counter wound layers on the outside of Osborne's bundle would be shredded and create a fractured structure.

Having overcome the anticipation of rejection and, in the previous paragraph having

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USSN: 09/770,342

described why a non-obviousness rejection would be unfounded, it is believed that the claims of this application now overcome any rejection based upon Osborne.

New with this Office Action is rejection of Claims 1-11, 16 and 17 under 35 U.S.C. §102(b) is being anticipated by U.S. 6,458,088 ("Hurtak et al."). That rejection is respectfully traversed. In the first instance, the only material disclosed by Hurtak et al. usable in its device, is "glass". The Declaration of Dr. Whealon noted above, specifically discusses the disclosure of Hurtak et al. and opines, based upon prior published references, a chemical dictionary and upon general knowledge that glass could not be considered a "polymer". Thus, for example, there is no possible way in which, for example, Amended Claim 10 could be anticipated by Hurtak et al.

Further, Claim 19, requires "fibers and a binder resin, the binder resin being uniformly disbursed between the fibers so as to fill in the void space in between." Clearly, the methods of making glass, i.e. from a "melt", *see* Whealon Declaration paragraphs 1-6, and the very definition of glass itself would specifically exclude that structure. Thus, we believe that rejection of Claim 10 and 19 as being anticipated by Hurtak et al. should be withdrawn.

Rejection of Claims 7 and 8 as being anticipated by Hurtak et al. should be similarly withdrawn in that both claims require the core material to be "polymeric".

It is to be noted that "polymeric" is, in fact defined in the Disclosure at page 4, line 18 (P.A.P 2003/0060731 paragraph [0010]). Polymeric would include carbon fibers, carbon composite materials and various of the other core wire and reinforcement materials described in the specification all of which are also "non-metallic" [paragraph [0009]]. It follows most certainly that at least Claims 7, 8, 10, and 19 are neither anticipated by nor rendered obvious by Hurtak et al.'s glass disclosure.

Claim 1 is also not anticipated by Hurtak et al. for the following reason(s). In the first instance, the consisting essentially of transitional language would preclude the presence of any metallic structure in the guide wire. The reason for this preclusion is that a metallic structure would change the essential characteristics of the guide wire core wire, particularly if used in an MRI environment. Again, Hurtak et al. discloses utilization of "metal in the guide wire distal tip portion 3" (column 3, line 61, *et seq.*). Nickel titanium alloys e.g. nitinol is specifically suggested. Clearly such alloys would have objectionable metallic characteristics and would exacerbate the problem(s) overcome by the present invention *viz.* elimination of antenna effect, healing, and magnetic-induced movement. For the reason stated, it is not believed that any of the claims of this application are anticipated by Hurtak et al.

MAD/122302.1

Page 6 of 7

**Mark G. Fleischhacker****USSN: 09/770,342**

Various of the dependent claims in this application have been rejected based upon Hurtak et al. and a series of secondary references. Since it has been shown that the Hurtak et al. primary reference does not anticipate nor render obvious the present claims, it is clear that all such rejections based upon secondary reference combinations in which the primary reference has been shown to be overcome also have been overcome and should be withdrawn.

Claims 25-29 have been added. These claims generally require the core wire to be helically wound. Antecedent bases for these claims is found in the Specification at page 8, line 8, *et seq.* (P.A.P. '731, paragraph [0022]). These types of claims were generally discussed during the March 31, 2006 phone conference. No new matter has been added. It is recognized that a Figure illustrating this subject matter may be needed if the Examiner finds the added claims otherwise patentable. Such a Figure will be provided if requested.

For the reasons stated above, it is respectfully requested that all of the rejections herein be re-evaluated and withdrawn.

The Applicants believe that the amendment and cancellation of claims, and the above comments, puts the application in condition for allowance.

Other than as concurrently authorized, no fee is believed to be due for the filing of this Amendment and Response, but if any fee is due it should be charged to Deposit Account 23-2053.

Respectfully submitted,

  
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